

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
INDIANAPOLIS**

OFFICE MEMORANDUM

Date: November 27, 2002

To: Water Pollution Control Board Members

From: Tim Method, Deputy Commissioner

Subject: Storm Water Rules 5 & 6

As you are aware, IDEM has been working with interested persons to implement the Federal Phase II Stormwater requirements. The Board has preliminarily adopted the Municipal Separate Storm Sewer System permit program (Rule 13). The stormwater rules for construction activities (Rule 5) and industrial activities (Rule 6) also are being updated to meet federal requirements and to improve the overall effectiveness of the stormwater efforts.

Over the past year, the IDEM has worked with interested persons to address concerns about IDEM's initial versions of Rule 5 and Rule 6 changes. We believe that we have made substantial progress in lessening concerns over many of the proposed changes by altering the proposed requirements and amending the draft language.

We believe that Rules 5 and 6 are ready for preliminary adoption.

The most critical issue remaining is the language involving the submittal of an erosion control plan for construction activities under Rule 5. Based on the Department of Natural Resources (DNR) experiences to date in implementing the rule, we are looking to provide more of an upfront process for verifying the adequacy of an erosion control plan before construction begins. The enclosed version of the rule retains a process for upfront verification and puts a 30-day clock on the state agencies for reviewing a submitted erosion control plan, which must be verified before a Notice of Intent is submitted. To address concerns over possible delays on small projects, this language exempts single-family residences less than 5 acres from the rule. IDEM remains open to further discussion on how to ameliorate concerns with possible delays on smaller projects and we are committed to working to reach as much agreement on this issue as possible prior to final adoption.

You may contact Larry Wu at 317/234-1805 or Bruno Pigott at 317/232-8631 if there are any questions on these rules prior to the December Board meeting. The next page notes how several other key issues on Rules 5 and 6 have been addressed to date:

Rule 5

- Waivers. Stakeholders expressed concern that the federal language allows for waivers in certain circumstances and yet those waivers were not included in the proposed rule revisions. The waivers mentioned are the Erosivity and TMDL waivers. During work group sessions, staff introduced these waivers to solicit input from stakeholders. The Erosivity waiver was originally intended to apply to arid climates in the Southwestern United States. The narrow based calculations in that waiver make it very unlikely that any business could qualify. For that reason as well as several other factors this waiver was not included in the proposed rule revisions. The TMDL waiver is now included in the rule.
- Enforcement and Inspection. Stakeholders expressed concern that draft language that allowed the department to require the project site owner to install appropriate measures beyond those specified in the SWPPP was overly broad. IDEM clarified and focused the language.
- Temporary Stabilization. Under 15-5-7(b)(16) temporary stabilization is required for vegetated areas with less than seventy percent cover that are likely to be left inactive for fifteen days or more. Members of the workgroup indicated that this provision is too broad and needs to account for the instances where runoff from an isolated mound would not leave a property or enter waters of a state. The rule was revised to address this concern.
- Notification of Contractors. The draft rules contained a provision that required a pre-construction conference with subcontractors. Stakeholders indicated that it might be difficult to assemble all of the necessary subcontractors at one time in all circumstances, and urged greater flexibility. The rule has been revised to provide flexibility in how subcontractors will be notified.

Rule 6

- No Exposure Exclusion and Mark Up of the Rule. Some stakeholders expressed an interest in limiting rule revisions to adopt the “no exposure exclusion” and expressed concern that instead IDEM circulated a large mark up of the rule. The purpose of the rule changes, however, is not only to include federal Phase II components, but also to provide clarity, improve the quality of Storm Water Pollution Prevention Plans, and ensure the use of appropriate BMPs. As such, much of the “mark up” of the rule can be attributed to the shifting of various sections of the rule to improve clarity.
- Extending Regulatory Controls to Non-Point Sources. Some work group members expressed concern that wording in several provisions, and in particular the definition of storm water discharge, amounted to extension of regulatory control to non-point sources. IDEM worked to clarify language to ensure that the rule applies to point-source discharges.

- Storm Water Sampling. Sampling is a requirement in the existing rule. Initial drafts of the revised rules included additional sampling requirements. Stakeholders indicated that they were concerned about the costs and challenges associated with new sampling requirements, and as a result, IDEM scaled back sampling requirements from previous drafts of the rule to reflect the basic eight parameters currently in the rule. In addition, the rule no longer requires both grab and composite samples. Furthermore, recent revisions struck the requirement for the use of comparative tables.
- The General Permit. During workgroup sessions, some stakeholders indicated that the draft rule breaks with the traditional role of a general permit as a self-enforcing set of requirements and creates a new system of individual permits. The revisions to the rule are intended to make this general permit more closely aligned with other general permit rules in terms of the five-year term, expiration, and renewal of the permits.